

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Bankruptcy Case No. 20-40188

Richard S. Virnig,

Debtor

**NOTICE OF HEARING AND
MOTION FOR MODIFICATION
OF CHAPTER 13 PLAN**

TO: All parties entitled to notice, if any, under Local Rule 1204(a), and the United States Trustee.

1. Debtor moves the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion on September 17, 2020 at 10:30 a.m. before the Honorable Kathleen H. Sanberg, Bankruptcy Judge, in U.S. Courthouse, Courtroom 8 West, 300 South Fourth Street, Minneapolis, Minnesota 55415

3. Any response to this motion must be filed and served by delivery not later than Friday 11, 2020, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. The Court has jurisdiction pursuant to 28 U.S.C. §157 and §1334, Bankruptcy Rule 5005 and Local Rule 201. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on January 22, 2020. The case is now pending in this Court.

5. Debtor requests confirmation of his Modified Chapter 13 Plan, a copy of which is attached hereto and incorporated herein by reference.

6. If testimony is necessary as to any facts relevant to this motion, the debtor will be available for testimony.

7. After confirmation, it was learned that the claim of the MN Department of Revenue filed shortly before confirmation increased the priority claims to the extent that the plan provided for insufficient payments to satisfy all priority claims as required.

8. The Debtor is proposing a modified Plan that allows him, in the future, to restructure his budget to pay additional funds into the Plan to pay the priority claims.

9. The modification as proposed will still allow debtor to pay, in full, all secured and priority creditor's claims in full within 60 months of the filing date of the original petition.

10. That the modification proposed by the debtor will not modify the rights of the unsecured, non-priority creditors in that they will receive essentially the same distribution under the modified plan.

11. That the Modified Plan as proposed divides all of the debtor's net disposable income, after the payment of reasonable and necessary living expenses to payment of debtor's creditors through the Modified Chapter 13 Plan, that said Plan is proposed in good faith and for paying debtor's creditors to the best of his ability as much as possible.

WHEREFORE, the debtor moves the Court for an Order that confirms the debtor's Modified Chapter 13 Plan.

Dated: August 11, 2020

THOMAS H. OLIVE LAW, P.A.

By: /e/ Thomas H. Olive
Thomas H. Olive (ID# 14423X)
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Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

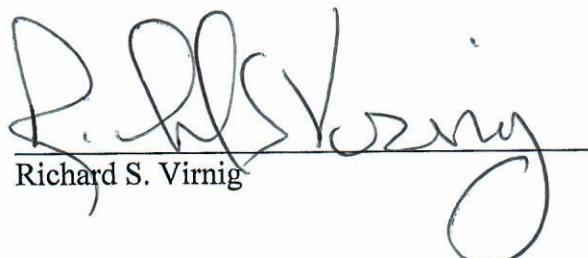
Bankruptcy Case No. 20-40188

Richard S. Virnig,
Debtor,

VERIFICATION

I, Richard S. Virnig, the party named in the foregoing Notice of Motion and Motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: 7-30-20



Richard S. Virnig

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Bankruptcy Case No. 20-40188

Richard S. Virnig,
Debtor

**MEMORANDUM IN SUPPORT
OF MOTION TO MODIFY
CHAPTER 13 PLAN**

The underlying facts and reasons for Debtor's Post-Confirmation Modification of his Chapter 13 Plan are specifically set forth in Debtor's Verified Notice of Motion and Motion for Modification of Chapter 13 Plan.

This Motion is governed by 11 U.S.C. §1329 and Local Rule 608. 11 U.S.C. §1329 provides in pertinent part as follows:

- (a) At any time after confirmation of the Plan, but before completion of payments under such Plan, the Plan may be modified, upon request of the Debtor(s), the Trustee, or the holder of an allowed unsecured claim, to:
 - 1. Increase or reduce the amount of payments on claims of particular class provided for the Plan;...

On proper showing of changed circumstances, Debtor may amend a Plan under Code §1329 to reduce the amount of the Plan payments. No particularly burdensome proof is required for Debtor to show "changed circumstances." *In Re: Davis*, 34 B.R. 319, 320 (Bankr. E.D.VA. 1983).

The Bankruptcy Courts have uniformly held that Code §1329 should be interpreted broadly to allow the Plan to accommodate Debtor to show "changed circumstances." *In Re: Davis*, 34 B.R. 319, 320 (Bankr. E.D.VA. 1983).

The Bankruptcy Courts have uniformly held that Code §1329 should be interpreted broadly to allow the Plan to accommodate changed circumstances, so long as the circumstances existed

originally on the date of the filing of the original Petition. *In Re: Walker*, 114 B.R. 847 850 (Bankr. N.D.N.Y.).

Additionally, the Debtor proposes this Plan modification in good faith and for the purpose of paying his creditors to the best of his ability and as much as possible. Pursuant to 11 U.S.C. §1325, the Debtor is paying into this Plan all of his net disposable income throughout the remaining Plan period.

Based on the above, the Debtor respectfully requests that the Modified Plan be confirmed.

Dated: August 11, 2020

THOMAS H. OLIVE LAW, P.A.

By: /e/ Thomas H. Olive
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Attorneys for Debtor

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DISTRICT OF MINNESOTA**

In Re: Bankruptcy Case No. 20-40188

Richard S. Virnig,
Debtor,

**UNSWORN DECLARATION
OF PROOF OF SERVICE**

Renee Heuton, employed by Thomas H. Olive Law, P.A., attorneys licensed to practice law in this Court, with an office address of 5270 West 84th Street, Suite 300, Bloomington, Minnesota 55437, declares that on August 11, 2020, she served the annexed **Notice of Hearing and Motion for Modification of Chapter 13 Plan and Memorandum in Support of Motion to Modify Chapter 13 Plan**, upon each of the entities named below through Electronic Case Filing, if applicable, or by mailing copies to each entity entitled to notice pursuant to applicable rules, by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at the Bloomington, Minnesota addressed to each of them as follows:

See attached service list

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: August 12, 2020

Signed: /e/ Renee Heuton
Renee Heuton

SERVICE LIST

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Minneapolis MN 55415

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Edina MN 55424

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Sauk Rapids MN 56379

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Cottage Grove MN 55016

American Express
Customer Service
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El Paso TX 79998

ARS National Services Inc
PO Box 463023
Escondido CA 92046-3023

Bank of America
PO Box 982238
El Paso TX 79998-2238

Barclays Bank
PO Box 8803
Wilmington DE 19899-8803

Big Picture Loans
Customer Support
PO Box 704
Watersmeet MI 49969

Capital Management Services
698 S Ogden St
Buffalo NY 14206-2317

Citi Cards
PO Box 6500
Sioux Falls SD 57117

Client Services Inc
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St Charles MO 63301-4047

Continental Central Credit
PO Box 131120
Carlsbad CA 92013

Credit Advocates Inc
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Burnsville MN 55306

Credit One Bank
Bankruptcy Dept
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Las Vegas NV 89193

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St Paul MN 55164-0451

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Hutchinson KS 67504

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Langhorne PA 19047

Ollo Card Services
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Old Bethpage NY 11804

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St Louis Park MN 55416-2699

Radius Global Solutions
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Ramsey NJ 07446

Ramsey County Finance
Collections Enforcement
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St Paul MN 55101

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RevSolve Inc
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Scottsdale AZ 85257

Rise/Fin Wise Bank
Customer Support
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Ft Worth TX 76185

Southdale Anesthesiologists LLC
Fairview Southdale Hospital
6401 France Ave S
Edina MN 55435

The Village at Palmetto Dunes
co RMC Property Management Inc
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The Villages at Palmetto Dunes HOA
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